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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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FM EXAMINER

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

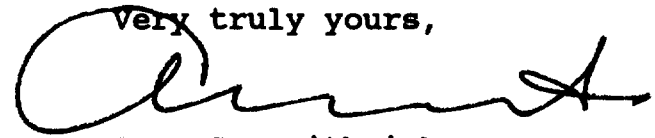
Re: Lauryn Broadcasting Corporation  
File No. BPH-910703MJ  
Beaumont, California

Dear Ms. Searcy:

Transmitted herewith, on behalf of Lauryn Broadcasting Corporation, applicant for a new FM station at Beaumont, California, are an original and four copies of its Opposition to Petition to Deny filed by Serna Broadcasting, Inc.

If there are any questions regarding this matter, please communicate with the undersigned.

Very truly yours,



Gary S. Smithwick  
Counsel for  
LAURYN BROADCASTING CORPORATION

Enc.  
GSS/pn.C1115

cc: As per Certificate of Service  
Lauryn Broadcasting Corporation

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Before the  
**Federal Communications Commission**

NOV 15 1991

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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AUXILIARY SERVICES

In Re Application of )  
 )  
LAURYN BROADCASTING CORPORATION ) File No. BPH-910703MJ  
 )  
For Construction Permit )  
for New FM On Channel 265A )  
at Beaumont, California )

**OPPOSITION TO PETITION TO DENY**

Lauryn Broadcasting Corporation ("Lauryn"), an applicant for a construction permit for a new FM station on Channel 265A at Beaumont, California, by its attorneys, hereby files its opposition to the Petition to Deny filed against Lauryn by Serna Broadcasting, Inc. ("Serna") on October 22, 1991.<sup>1</sup> Serna states that Lauryn's application is short-spaced to the pending application of KATY-FM, Idyllwild, California, to make a minor change in its transmitter location (FCC File BMPH-910611IF).<sup>2</sup>

Kay Sadlier-Gill is permittee of KATY-FM. Public Notice of acceptance for filing of KATY-FM's application was given by the Commission on June 27, 1991, effective the following day, June 28, 1991. Lauryn's application was filed on July 3, 1991 (only two days after the effective date of public notice).

By the time the Commission gave public notice of the acceptance of Sadlier-Gill's application, Lauryn's site was already selected and reasonable assurance of its availability

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<sup>1</sup> Counsel for Serna has consented to extension of time to November 15, 1991 for Lauryn to file this opposition.

<sup>2</sup> Serna has filed petitions to deny or informal objections against other competing applications for Beaumont.

obtained. Lauryn's engineer had already prepared the engineering portion of the application. At the time the engineering portion of the application was prepared, to timely meet the Commission's filing window, there was no opportunity for Lauryn or its engineer to have known about the existence of the Sadlier-Gill application. Under these circumstances, any processing system which might lead to the denial of Lauryn's application would be arbitrary, capricious, and contrary to law.

The same consulting engineer prepared Sadlier-Gill's amendment and Serna's application. Prior to issuance of the Public Notice of Sadlier-Gill's amendment, the consulting engineer was the only person with access to the information contained in the Amendment.<sup>3</sup> Instead of denial of Lauryn's application, the proper action of the Commission would be to designate the KATY-FM application for hearing with the Beaumont applications, as it did in Holder Communications Corporation of Louisiana, 5 FCC Rcd 2050 (1990). Therein the Commission designated the minor change application of KHLA, Lake Charles, Louisiana, for hearing with three competing applications for a new FM station at Liberty, Texas.

In Holder, the Commission cited the Report and Order in MM Docket No. 84-750, 50 Fed. Reg. 19936, 19941 (May 13, 1985) [FM Application Processing, 58 RR 2d 776 (1985), modified, 59 RR 2d 100 (1985)] ("Report and Order"). That Report and Order

specifically provides that any mutually exclusive applications for new facilities or for modifications to existing facilities filed during the window for new applications will be grouped for comparative hearing. Sadlier-Gill's amendment, filed June 11, 1991, was filed within the Beaumont window period, which extended from June 3 to July 3, 1991. Therefore, as a matter of law, her application must, if otherwise acceptable, be consolidated with the Beaumont applications.

The Bureau should accordingly afford Sadlier-Gill an opportunity to amend her application to eliminate the spacing deficiency with respect to Richmond's application and the other Beaumont applications.<sup>4</sup> If Sadlier-Gill fails to amend her application, the Hearing Designation Order to be issued for Beaumont must consolidate Sadlier-Gill's application for hearing (if she is otherwise qualified and her application otherwise acceptable).

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<sup>4</sup> The attached letter from Lauryn's technical consultant demonstrates that KATY-FM would need only to specify a transmitter site, one degree of latitude and one degree of longitude (approximately 45 feet), away from Lauryn's application in order to be consistent with the spacing constraints.

In view of the foregoing, Serna's Petition to Deny should be denied.

Respectfully submitted,

**LAURIN BROADCASTING CORPORATION**

By: 

Gary S. Smithwick  
Its Attorney

**SMITHWICK & BELENDIUK, P.C.**  
2033 M Street, N.W.  
Suite 207  
Washington, DC 20036  
(202) 785-2800

November 15, 1991

PN\BEAUMONT\OPPETDEN

# **BROMO**

# **COMMUNICATIONS** Inc.

BROADCAST  
TECHNICAL CONSULTANTS

WILLIAM G. BROWN  
CLIFTON G. MOOR  
R. STUART GRAHAM  
JEFFERSON G. BROCK  
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November 15, 1991

Via Facsimile

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Smithwick & Belendui, P.C.  
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Washington, DC  
(202) 429-0600

Dear Gary:

I have reviewed the Petition to Deny Lauryn Broadcasting in Beaumont, California, with regard to the shortspace between Lauryn and KATY, Idyllwild, California. It is noted that should KATY relocate their proposed transmitter site by one second of latitude and one second of longitude away from the Lauryn application (this is approximately 15 meters or 45 feet), the shortspace would decrease to less than 0.5 kilometers, which would round to zero, eliminating the restriction.

Sincerely,



Stu Graham  
Bromo Communications, Inc.

SG/rg

**CERTIFICATE OF SERVICE**

I, Lisa M. Volpe, a legal assistant in the law firm of Smithwick, & Belendiuk, P.C., certify that on this 15th day of November, 1991, copies of the foregoing were mailed, postage prepaid, to the following:

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Mass Media Bureau  
Federal Communications  
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\_\_\_\_\_  
Lisa M. Volpe

\*by hand